

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: ) Chapter 11  
)  
ATA Holdings Corp., et al.,<sup>1</sup> ) Case No. 04-19866  
) (Jointly Administered)  
Debtors. )

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO REJECT  
AIRPORT LEASE AND USE AGREEMENTS EFFECTIVE  
AS OF THE REJECTION DATE  
(SEA AND SRQ)**

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The debtors and debtors in possession (the "Debtors") in the above captioned chapter 11 cases (the "Chapter 11 Cases"), file this motion (the "Motion") for entry of an order (the "Order"), the proposed form of which is attached as Exhibit A, authorizing the Debtors, pursuant to 11 U.S.C. § 365, to reject the Airport Agreements (as defined herein) effective as of the Rejection Date (as defined herein).

In support of this Motion, the Debtors state as follows:

**JURISDICTION**

1. On October 26, 2004 (the "Petition Date"), each of the Debtors filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court"), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing these Chapter 11 Cases. The Debtors continue to operate their businesses and

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<sup>1</sup> The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassadors Travel Club, Inc. (04-19869), ATA Leisure Corp. (04-19870), Amber Travel, Inc. (04-19871), American Trans Air Execujet, Inc. (04-19872), ATA Cargo, Inc. (04-19873), and Chicago Express Airlines, Inc. (04-19874).

manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed. On November 1, 2004, the United States Trustee appointed an official committee of unsecured creditors (the "UCC") pursuant to § 1102(a)(1) of the Bankruptcy Code.

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. The statutory basis for the relief sought herein is section 365(a) of the Bankruptcy Code.

#### **RELIEF REQUESTED**

5. For the reasons stated below, the Debtors request that the Court enter an order pursuant to section 365 of the Bankruptcy Code authorizing the Debtors to reject the Airport Agreements (as defined herein) effective as of the Rejection Date (as defined herein).

#### **BASIS FOR RELIEF**

6. The Debtors are parties to the following agreements:
- a) Port of Seattle Signatory Lease And Operating Agreement dated December 13, 2003, by and between the Port of Seattle and ATA (the "SEA Agreement")
  - b) Operating Agreement And Terminal Building Lease For Commuter And Non-Signatory Airlines dated April 17, 1995, by and between the Sarasota Manatee Airport Authority and ATA (the "SRQ Agreement") (collectively, the "Airport Agreements").

7. Pursuant to the Airport Agreements, the above-named entities have leased certain facilities and space to the Debtors as well as certain rights and privileges to facilitate the Debtors' provision of flight service to the airports.

8. As part of the Debtors' ongoing restructuring efforts, the Debtors are analyzing their executory contracts and unexpired leases. As a result of that analysis the Debtors believe in their sound business judgment that rejection of the Airport Agreements is in the best interests of their estates and their creditors.

9. Due to circumstances within the airline industry, the Debtors have decided to reduce their number of daily scheduled flights. By the middle of April, 2005, the Debtors no longer intend to offer scheduled services to the airports covered by the Airport Agreements, and as a result, the Debtors will need neither the facilities, nor the rights and privileges afforded them by the Airport Agreements, and the Airport Agreements will become an unnecessary burden to the Debtors, their estates, and creditors.

#### **REJECTION OF THE LEASE & USE AGREEMENT**

10. Section 365(a) of the Bankruptcy Code provides that a debtor "subject to the court's approval, may assume or reject any executory contract or an unexpired lease." 11 U.S.C. § 365(a). The assumption or rejection of an unexpired lease or executory contract by a debtor is subject to review under the business judgment standard. See, e.g., Control Data Corp. v. Zelman (In re Minges), 602 F.2d 38, 43 (2d Cir. 1979) (Act case); In re Gucci, 193 B.R. 411, 414-15 (S.D.N.Y. 1996); In re Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"); In re Cutters, Inc., 104 B.R. 886, 889 (Bankr. M.D. Tenn. 1989). This standard is satisfied when a debtor demonstrates that

rejection will benefit the estate. See, e.g., In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Stable Mews Assoc., Inc., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).

11. If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See, e.g., Group of Institutional Investors v. Chicago, M., St. P. & P.R.R. Co., 318 U.S. 523, 550-51 (1943); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39-40 (3d Cir. 1989); In re Child World, Inc., 142 B.R. 87, 90 (Bankr. S.D.N.Y. 1992); see also Allied Tech., Inc. v. R.B. Brunemann & Sons, Inc. (In re Allied Tech., Inc.), 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982) ("Court approval of a debtor in possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative or contrary to the provisions of the Bankruptcy Code").

12. The business judgment rule has vitality in chapter 11 cases and shields a debtor's management from judicial second-guessing. See, e.g., Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992); see also Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

13. The rejection of the Airport Agreements is prudent and is a reasonable exercise of the Debtor's business judgment. The Debtors no longer intend to offer scheduled service to the airports covered by the Airport Agreements making the costs and fees associated with such agreements unnecessary expenses.

**EFFECTIVE DATE OF REJECTION**

14. Debtors request that the rejection of each of the Airport Agreements be effective as of the date upon which Debtors surrender possession of the premises leased to them pursuant to the Airport Agreements, such surrender to be deemed to occur upon the tendering of written notice to the applicable airport authority of rejection of the Airport Agreements and the relinquishment of possession (the "Rejection Date").

**NO PRIOR REQUEST**

15. No prior motion for the relief requested herein for the Airport Agreements has been made to this or any other Court.

WHEREFORE, the Debtor requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtor to reject the Airport Agreements effective as of the Rejection Date.

Respectfully submitted,

BAKER & DANIELS

By: /s/Jeffrey C. Nelson

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served this 3<sup>rd</sup> day of March 2005, by electronic mail on the Core Group, 2002 List, Appearance List, Port of Seattle, and Sarasota Manatee Airport Authority.

/s/ Jeffrey C. Nelson